

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHAWNBRLEAN DAVIS	:	
	:	
Plaintiff	:	
	:	
v.	:	NO. 02-2665
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY	:	
	:	
Defendant	:	

SEPTA'S REPLY

Plaintiff, Shawnbrean Davis' response to SEPTA's summary judgment motion presents only one legal issue for this Court to decide. The issue is whether SEPTA regarded him as disabled under the Americans with Disability Act ("ADA"). Mr. Davis cannot sustain his regarded as claim as a matter of law because he cannot show that SEPTA treated him as having a substantial limiting impairment for the following reasons:

1. Mr. Davis concedes that he is not substantially limited in any major life activity (see Plaintiff Shawnbrean Davis' Response to Defendant's Motion for Summary Judgment Under Fed. R. Civ. P. 56. ("Davis Response") at 6);
2. Mr. Davis concedes that Linda Yoxtheimer, SEPTA's Director of Vocational Rehabilitation, is the person at SEPTA in charge of determining if SEPTA employees are qualified for particular jobs due to prior injuries (see Davis Response at 3);
3. Mr. Davis concedes that Ms. Yoxtheimer made every effort to place him in a wide variety of positions (see Davis Response at 7); and

4. Mr. Davis has offered no evidence that any of the individuals that rejected him for the positions he tried for had any knowledge about his alleged physical limitations.

Thus, Mr. Davis cannot sustain his ADA regarded as claim.

See Dorn v. Potter, 191 F.Supp. 2d 612, 625 (W.D. Pa. 2002) (granting summary judgment to defendant where plaintiff failed to establish the defendant viewed him as having a substantially limiting impairment); Little v. Southeastern Pennsylvania Transportation Authority, 2003 WL 1793528 at *3 (E.D. Pa., April 3, 2003) (granting summary judgment to defendant where plaintiff failed to offer any probative evidence that defendant was under any misperceptions about plaintiff's impairment or considered her substantially limited in a broad class of jobs) (attached hereto as Exhibit A); Knoll v. Southeastern Pennsylvania Transportation Authority, 2002 WL 31045145 at *6 (E.D. Pa., September 11, 2002) (sufficient evidence must be provided to permit reasonable fact to conclude that defendant regarded plaintiff as disabled) (attached as Exhibit 13 to SEPTA's Summary Judgment Motion).

Because Mr. Davis has offered no evidence to establish that SEPTA regarded him as disabled, SEPTA is entitled to summary judgment.

Respectfully submitted,

MILLER, ALFANO & RASPANTI, P.C.

By:

GINO J. BENEDETTI, ESQUIRE
JODEEN M. HOBBS, ESQUIRE
Atty I.D. Nos. 59584 and 80200
1818 Market Street, Suite 3402
Philadelphia, PA 19103

Attorneys for Defendant
Southeastern Pennsylvania
Transportation Authority

DATED: August 19, 2003

CERTIFICATE OF SERVICE

I, Jodeen M. Hobbs, Esquire, hereby certify that a true and correct copy of the foregoing pleading, SEPTA's Reply was served on this date upon the individual and in the manner indicated below:

VIA FIRST CLASS MAIL

Marc Gordon, Esquire
Gordon & Weinberg
21 South 21st Street
Philadelphia, PA 19103

By: _____
JODEEN M. HOBBS, ESQUIRE

DATED: August 19, 2003

F:\PBL\GJB\SEPTA\Septa.Davis\Reply Brief.wpd